

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of

Applicants:	McManus et. al.)	
)	Group Art Unit: 3612
Application No.:	10/815,588)	Examiner: Gordon, S
)	
Filed:	April 1, 2004)	
)	
For:	APPARATUS FOR)	
	CONFIGURING THE)	
	INTERIOR SPACE OF A)	
	VEHICLE)	

REPLACEMENT APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This replacement brief is being filed in response to the Notification of Non-Compliant Appeal Brief of March 23, 2009. This is an appeal of the Final Official Action dated February 5, 2007 and Advisory Action dated May 1, 2007 issued in respect of the above-identified application, finally rejecting claims 1-3, 7-8, 12-14, 20, 25, 36, 42-46, and 49. Pending claims 1-3, 7-8, 12-29, and 36-55 are provided in the attached claims appendix.

I. Real Party in Interest

The real party in interest is The Riverbank, LLC, located at 2936 Bankers Dr., Bloomington, Indiana 47408.

II. Related Appeals and Interferences

There are no other appeals or interferences known to Appellant, the Appellant's legal representative, or assigns which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

Allowed claims:	24, 37, 47, 48, and 50
Claims objected to:	51-55
Claims withdrawn:	15-19, 21-23, 26-29, and 38-41
Claims cancelled:	9-11 and 30-35
Claims rejected:	1-3, 7-8, 12-14, 20, 25, 36, 42-46, and 49
Claims appealed:	1-3, 7-8, 12-14, 20, 25, 36, 42-46, and 49

IV. Status of Amendments

There are no outstanding amendments.

V. Summary of Claimed Subject Matter

The following explanation of the subject matter defined in each of the independent claims is provided with reference to page, paragraph, and line numbers in the specification, and the drawings by reference characters as required by §41.37(c)(v). These references are made to a specific embodiment(s) disclosed in the application and do not limit the scope of the independent claims to the specific embodiment(s) and should not necessarily be considered to be exhaustive.

A. Claim 1

The subject matter defined in claim 1 relates to a passenger vehicle 10 that has seats 130, 132 and an expansion portion 12. The expansion portion is able to move along the longitudinal axis of the vehicle between a retracted position, shown in Fig. 1, and an extended position, shown in Fig. 3. Bumper portion 54 is coupled to the expansion portion and moves therewith between the retracted and extended position. [page 4, l. 18 – page 5, l. 25]

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 1-3, 7, 12-13, 20, 25, and 42-43 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,213,531 to Corey (hereinafter "Corey"). Claims 1-3 and

14 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,127,697 to St. Marie (hereinafter "St. Marie"). Claims 1-2 and 8 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,784,429 to Hodges (hereinafter "Hodges"). Claims 1-3 and 12 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,133,571 to Fillios (hereinafter "Fillios"). Claims 7 and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,367,858 to Bradford (hereinafter "Bradford"). Claims 1 and 20 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,302,475 to Anderson (hereinafter "Anderson"). Claims 25, 36, and 44-46 stand rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Fillios. Claims 44-46 stand rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Anderson. Claim 49 is rejected under 35 U.S.C. §103(a) as being unpatentable over Anderson.

VII. Argument

A. Claims 1-3, 7-8, 12-14, 20, 25, 36, 42-46, 49, and 49. Rejections under 35 U.S.C. §102

Claim 1 is the only independent claim appealed and the balance of the claims depend therefrom. As discussed in greater detail below, none of the cited references teach a bumper coupled to the expansion portion for movement therewith.

Applicant submits that a *prima facie* case of anticipation has not been made by the Official Action. “For a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art.” *Motorola, Inc. v. Interdigital Technology Corp.*, 121 F.3d 1461, 1473, 43 U.S.P.Q.2d 1481, 1490 (Fed. Cir. 1997) (*citing In re Spada*, 911 F.2d 705, 708, 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)).

i. Corey

Corey relates to an EXTENDABLE SLEEPER FOR A TRUCK and discloses a truck 22 having an extension 40 constructed from extension sidewalls 42 and an extension rear panel 43.

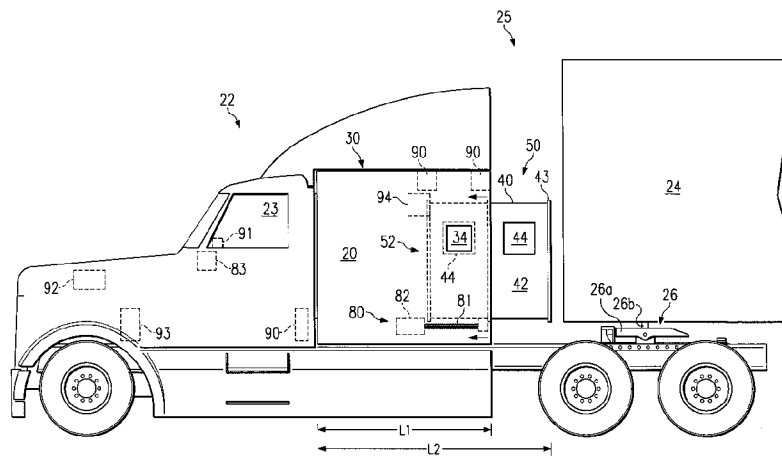


Fig. 1 of Corey

ii. St. Marie

St. Marie relates to an INCONSPICUOUS EXPANDABLE VAN and discloses vehicle 2 having an extendable compartment. The extendable compartment, shown in Fig. 1, includes side walls 15, roof 16, and back wall 17.

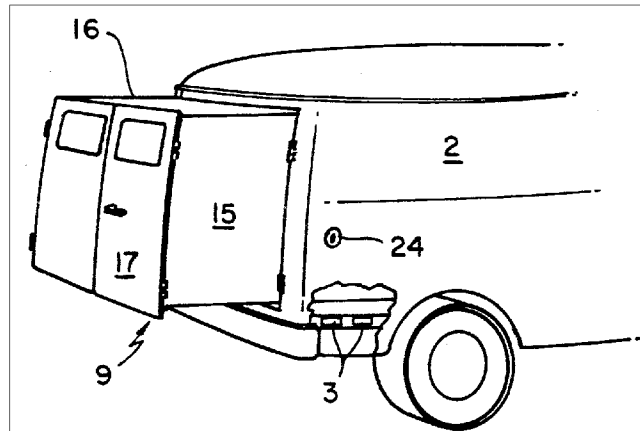


Fig. 1 of St. Marie

iii. Hodges

Hodges relates to a COLLAPSIBLE CAMPER TOP FOR PICK-UP TRUCKS. The collapsible camper top 1 includes three extendable sections 2, 14, 26. End section 26 includes rear window 38 and rear window seal 32.

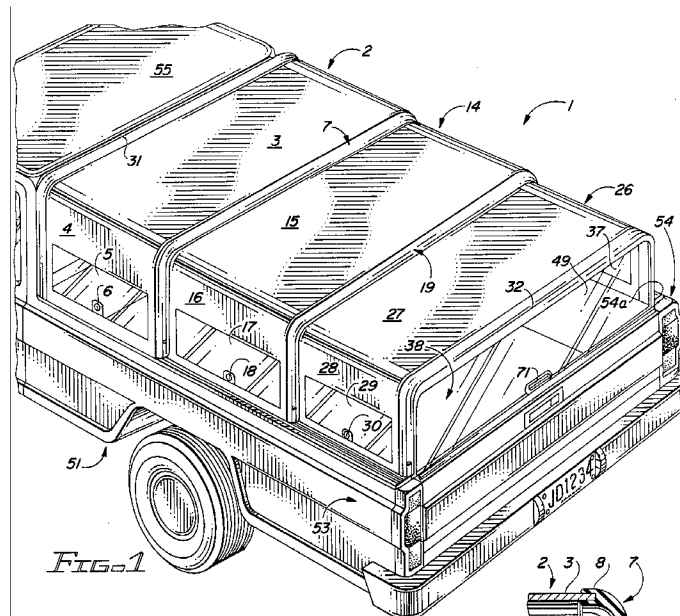


Fig. 1 of Hodges

iv. Fillios

Fillios relates to an EXPANDABLE CAMPER BODY and discloses delivery van 10 having an expandable aft section 16. Aft section 16 has a floor 26, side-walls 28, rear wall 30, and a roof 32.

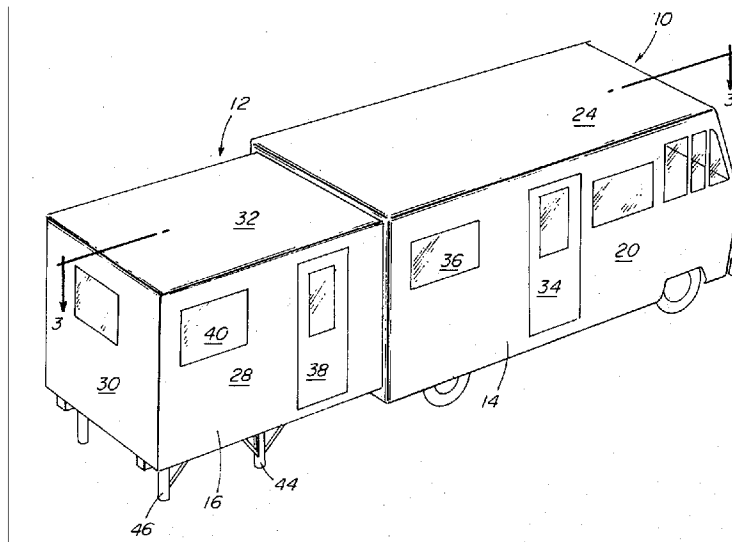
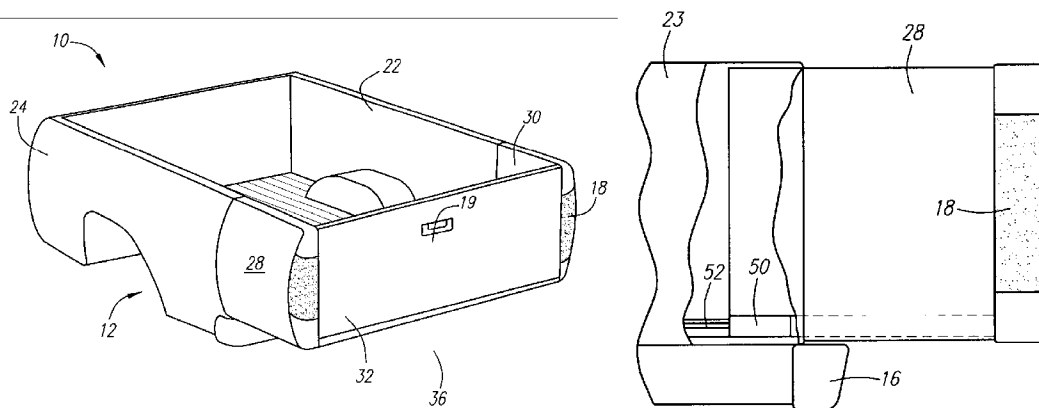


Fig. 2 of Fillios

v. Bradford

Bradford relates to a TRUCK BED EXTENDER and discloses extendable truck bed 14. Truck bed 14 includes tailgate assembly 32 that selectively extends rearwardly. Truck bed 14 also includes stationary bumper 16, shown most easily in Fig. 3.



Figs. 1d and 3 of Bradford.

vi. Anderson

Anderson relates to a MULTI-LEVEL EXPANDABLE TRAILER and discloses trailer 10 with moveable pods 62a, 62b defined in the sides thereof. Pods 62a, 62b each include lateral walls 66.

Fig. 5 of Anderson

vii. One of ordinary skill in the art would not find the cited structures if asked to identify bumpers

Claim 1 requires, in part, "a bumper coupled to the expansion portion such that movement by the expansion portion between the retracted position and the extended position causes the bumper to move therewith." (hereinafter, "the bumper limitation"). For each reference, the Official Action cites a back wall of an expansion portion, an equivalent thereof, or a seal and states that such structure satisfies the bumper limitation. If one of ordinary skill in the art was asked to identify a bumper in any of the cited references, he/she would not identify the walls or seal chosen by the Official Action. Conversely, one of ordinary skill would identify structure such as bumper 16 of Bradford.

viii. None of the cited references disclose the bumper limitation

In rejecting claim 1 for each of the above cited references, with respect to the bumper limitation, the Official Action states "Webster's Ninth New Collegiate Dictionary (1990) defines a bumper as 'a device for absorbing shock or preventing damage.'" Whereas this definition is a reasonable one, the Official Action then falters in its application of this definition by unreasonably applying it.

For each reference, the Official Action cites a back wall of an expansion portion, an equivalent thereof, or a seal and states that such structure satisfies the bumper

limitation. In discussing Corey, the Official Action states that "extension rear panel 43" "would serve to absorb shock to the rear portion 40 and prevent damage to the expandable cabin portion. Note for example, if a baseball or stone were accidentally thrown at portion 40 and struck element 43, element 43 would clearly absorb the shock of the ball or stone and protect the overall structure 40 from damage." First, rear panel 43 is a part of extension 40. Accordingly, any damage to or force experienced by the rear panel 43 is inherently experienced by the greater extension 40, of which rear panel 43 is a part. Claim 1 separately claims an expansion portion. Thus, citing rear panel 43 of extension 40 as a bumper is improper. Second, rear panel 43 is not described as having any force absorbing properties nor described as providing any sort of damage protection.

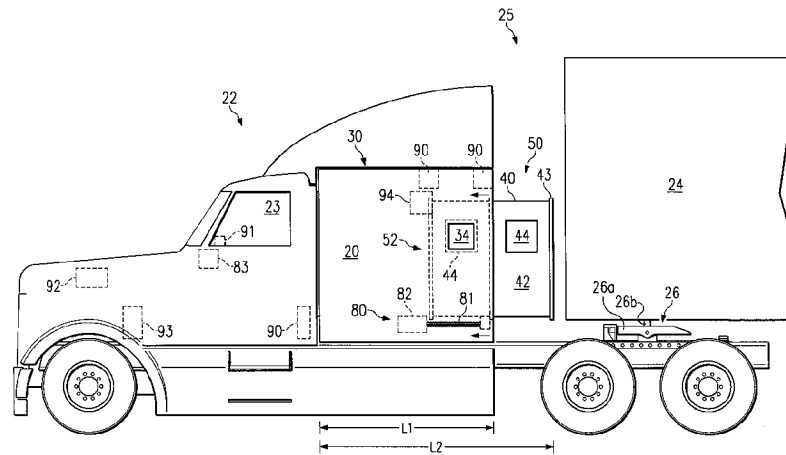


Fig. 1 of Corey

The above arguments can be applied to each of the references cited. The Official Action makes the same unreasonable application of the definition for each reference. In discussing St. Marie, the Official Action cites back wall 17 of the extendable compartment as a bumper. In addition to this being an unreasonable application of the supplied definition, viewing of Fig. 1 clearly shows van 2 with a bumper that is fixed on the frame and fails to travel with the extendable compartment as required by claim 1.

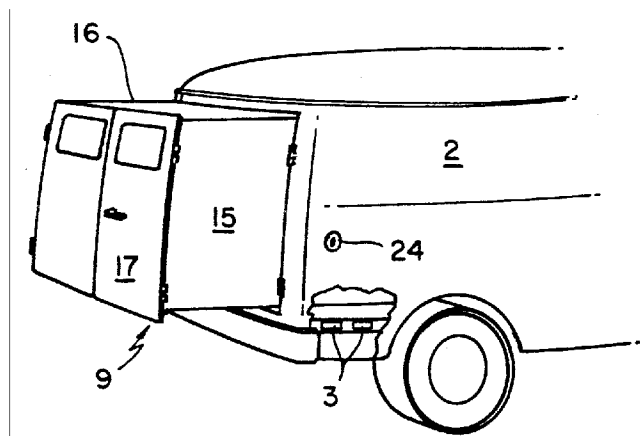


Fig. 1 of St. Marie

In discussing Hodges, the Official Action cites window seal 32 as the bumper. Window seal 32 is not a bumper. Furthermore, a bumper is clearly shown that is fixed and does not travel with the extendable portion 26 of the camper top 1.

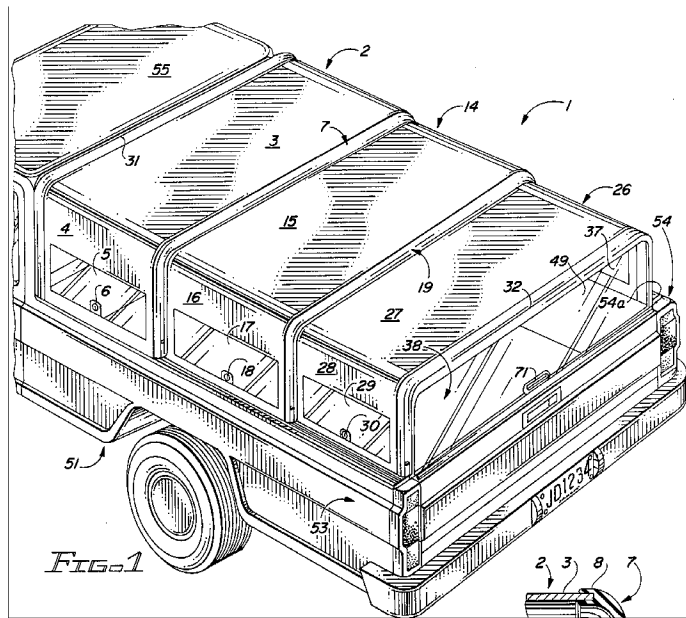


Fig. 1 of Hodges

In discussing Fillios, the Official Action cites rear wall 30 as the bumper.

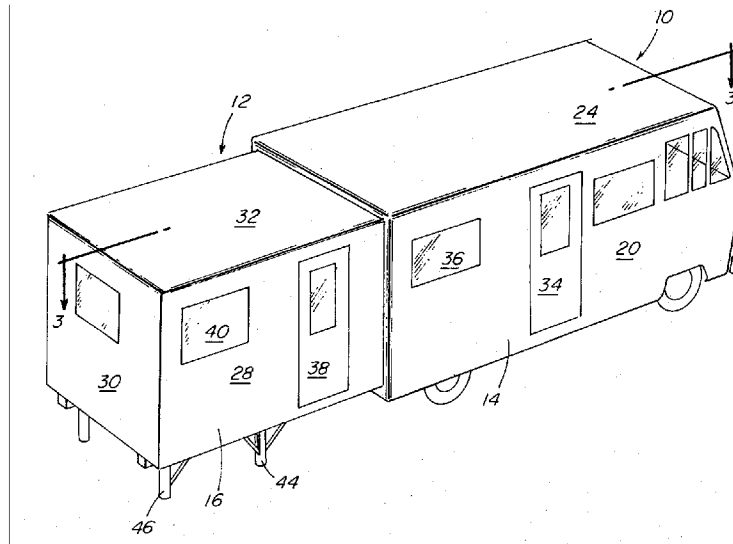
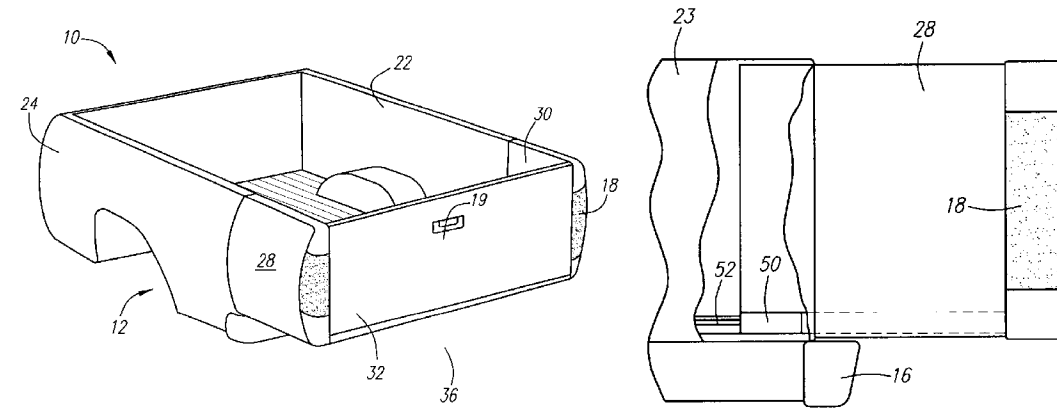


Fig. 2 of Fillios

In discussing Bradford, the Official Action cites tailgate assembly 32 as the bumper. Tailgate 32 is not a bumper. Furthermore, fixed bumper 16 is clearly shown in Fig. 3.



Figs. 1d and 3 of Bradford.

Finally, in discussing Anderson, the Official Action cites lateral walls 66 as the bumper.

Fig. 5 of Anderson

Clearly, for each cited reference, the Official Action cites walls (except where it cites the window seal of Hodges). None of these references discussed the cited "bumpers" as performing any impact protection function. These cited walls are the structure that a bumper would be placed to protect. Each of the cited walls, when analogized to claim 1, is part of the expansion portion of claim 1, not a bumper that travels with the expansion portion. The citing of the various walls and window seal as a bumper is an unsupported attempt to assign the claim terms to various parts of the references. The analysis of the Official Action fails to reasonably apply its own cited definition and instead mutates the definition by application. Furthermore, the mutation is so egregious that its application forces structure called out by the references themselves as bumpers to be ignored. The called out bumpers are ignored

because they do not travel with the expansion portion and thus to not mesh with the mutated view that the Official Action wishes to apply.

ix. Citing a rear wall of an expansion portion as a bumper is not consistent with dependent claims.

Claim 2 requires that "the expansion portion includes a rear wall." Accordingly, the combination of claims one and two call out the bumper as a distinct element from the rear wall of the expansion portion. Clearly, rear walls are accounted for in the claims, and the claimed bumper is a distinct entity. Accordingly, citation of a rear wall as a bumper is inappropriate.

x. The Examiner's application of the definition completely vitiates the bumper limitation

When repeating the rejection with respect to St. Marie, the Official Action cites back wall 17 and states that "Clearly element 17 would serve to absorb at least some shock and prevent at least some damage to the surrounding structure of the device." Accordingly, the Official Action is stating that any material that fails to allow a perfectly elastic collision (defined as "no loss of kinetic energy") would satisfy the stated definition by "absorbing at least some shock." On the scales of matter with which the present application is dealing, the Applicant can not think of any collision that is perfectly elastic. Accordingly, all relevant matter in all relevant configurations would satisfy the Official Action's test of "absorbing at least some shock." Thus, the Official Action's application of its selected definition of bumper encompasses all matter and vitiates the bumper limitation. By doing so, the Official Action fails to make a reasonable interpretation. Clearly, the standard of only requiring absorbing "at least some shock" is not a proper test to determine whether something satisfies this limitation. Furthermore, a reasonable application of the Webster's definition cited by the Official Action results in all of the cited references failing to disclose the limitation at issue.

VIII. Conclusion

In view of the above, Applicants respectfully submit that the present application is in order for allowance and respectfully request the Honorable Board of Appeals to direct the withdrawal of the rejections of the Final Official Action and the issuance of a Notice of Allowance.

Respectfully submitted,

/Ryan C. Barker/

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CLAIMS APPENDIX

Listing of Claims

1. A passenger vehicle, including:
 - a body having a longitudinal axis;
 - an expansion portion connected to the body and configured to move substantially along the longitudinal axis between a retracted position wherein the body and the expansion portion define a first volume of interior space, and an extended position wherein the body and the expansion portion define a second volume of interior space, the second volume being larger than the first volume;
 - a bumper coupled to the expansion portion such that movement by the expansion portion between the retracted position and the extended position causes the bumper to move therewith; and
 - a first seat supported by the body.
2. The vehicle of claim 1, wherein the body includes a pair of rear panels, a roof extending between the rear panels, and a floor extending between the rear panels, and the expansion portion includes a rear wall, a pair of side walls, an upper wall extending between the side walls, and a lower wall extending between the side walls.
3. The vehicle of claim 2, wherein the upper wall is positioned below the roof, the lower wall is positioned above the floor, and the side walls are positioned between the rear panels when the expansion portion is in the retracted position.
4. The vehicle of claim 2, wherein the upper wall is positioned above the roof, the lower wall is positioned above the floor, and the side walls are positioned outside the rear panels when the expansion portion is in the retracted position.
5. The vehicle of claim 2, wherein the roof includes a outer shell and an inner shell, and the rear panels each include an outer panel and an inner panel, the upper wall being positioned between the outer shell and the inner shell, and each side wall being positioned between an outer panel and an inner panel of one of the rear panels when the expansion portion is in the retracted position.
6. The vehicle of claim 5, the expansion portion further including a flange extending along the side walls and the upper wall, the flange engaging a first surface of the vehicle to seal the first volume when the expansion portion is in the retracted position and a second surface of the vehicle to seal the second volume when the expansion portion is in the extended position.

7. The vehicle of claim 2, wherein the roof, the rear panels, and the floor define an edge that extends substantially around an opening, the rear wall including a perimeter that engages the edge when the expansion portion is in the retracted position.

8. The vehicle of claim 2, wherein the rear wall includes a lift gate door having a hatch window.

9-11. (Cancelled)

12. The vehicle of claim 2, wherein each rear panel includes a window and each side wall includes a side window, each side window being substantially aligned with a portion of one of the rear panel windows when the expansion portion is in the retracted position.

13. The vehicle of claim 2, wherein each rear panel includes an inner perimeter seal and an outer perimeter seal, and each side wall includes an inner engagement surface and an outer engagement surface, the inner engagement surfaces engaging the inner perimeter seals when the expansion portion is in the extended position and the outer engagement surfaces engaging the outer perimeter seals when the expansion portion is in the retracted position.

14. The vehicle of claim 2, wherein the body further includes a pair of wheel wells, the lower wall extending between the wheel wells when the expansion portion is in the retracted position.

15. (Withdrawn) A passenger vehicle; including:

a body;

an expansion portion adapted to connect to the body and configured to expand longitudinally between a first expansion portion position defining a first volume of interior space, and a second expansion portion position defining a second volume of interior space, the second volume being larger than the first volume;

a bumper movable between a first bumper position and a second bumper position; and

a first seat connected to a floor of the body, the expansion portion being movable relative to the first seat between the first and second expansion portion positions.

16. (Withdrawn) The vehicle of claim 15, wherein the expansion portion is movable manually.

17. (Withdrawn) The vehicle of claim 15, further including an actuation and support assembly including a housing mounted to a frame of the vehicle, a bracket connected to the expansion portion, and a movable member connected between the housing and the bracket, the movable member being movable relative to the housing to move the expansion portion between the first and the second expansion portion positions.

18. (Withdrawn) The vehicle of claim 17, wherein the movable member is supported for movement within the housing.

19. (Withdrawn) The vehicle of claim 17, wherein the assembly is mounted below the expansion portion.

20. The vehicle of claim 1, further including a plurality of actuation and support assemblies, each assembly including a housing configured for mounting to the body, a bracket connected to the expansion portion, and a movable member connected between the housing and the bracket, the movable member being movable relative to the housing to move the expansion portion between the retracted and the extended positions.

21. (Withdrawn) The vehicle of claim 20, wherein the housings of a first pair of the assemblies are mounted substantially within a first rear panel of the body, and the housings of a second pair of the assemblies are mounted substantially within a second rear panel of the body.

22. (Withdrawn) The vehicle of claim 21, wherein a portion of the movable members of the first pair of assemblies are mounted substantially within a first side wall of the expansion portion and a portion of the movable members of the second pair of assemblies are mounted substantially within a second side wall of the expansion portion.

23. (Withdrawn) The vehicle of claim 21, wherein one assembly of each of the first and the second pairs of assemblies is mounted in substantially parallel relationship to the longitudinal axis approximately half way between a floor of the body and a roof of the body.

24. A passenger vehicle, including:

a body having a longitudinal axis;

an expansion portion connected to the body and configured to move substantially along the longitudinal axis between a retracted position wherein the body and the expansion portion define a first volume of interior space, and an extended position wherein the body and the expansion portion define a second volume of interior space, the second volume being larger than the first volume;

a first seat supported by the body; and

a plurality of actuation and support assemblies, each assembly including a housing configured for mounting to the body, a bracket connected to the expansion portion, and a movable member connected between the housing and the bracket, the movable member being movable relative to the housing to move the expansion portion between the retracted and the extended positions, the housing of a first one of the assemblies being mounted substantially within a first rear panel of the body, the housing of a second one of the assemblies being

mounted substantially within a second rear panel of the body, a portion of the movable member of the first one of the assemblies being mounted substantially within a first side wall of the expansion portion, and a portion of the movable member of the second one of the assemblies being mounted substantially within a second side wall of the expansion portion.

25. The vehicle of claim 1, wherein the first seat is connected to a lower wall of the expansion portion and further including a second seat connected to a floor of the body, the first seat being spaced apart from the second seat by a first distance when the expansion portion is in the retracted position and by a second distance that is larger than the first distance when the expansion portion is in the extended position.

26. (Withdrawn) The vehicle of claim 25, wherein the first seat and the second seat are configured to face one another.

27. (Withdrawn) The vehicle of claim 25, further including a table mounted to a rear panel of the vehicle for movement between a stowed position wherein the table is substantially parallel to the rear panel and an in-use position wherein the table is supported at an angle relative to the rear panel.

28. (Withdrawn) The vehicle of claim 25, wherein the first seat includes a back, the first seat being connected to the lower wall such that the back is substantially adjacent a rear wall of the expansion portion.

29. (Withdrawn) The vehicle of claim 25, wherein the first seat and the second seat are configured to face away from one another.

30-35. (Cancelled)

36. The vehicle of claim 1, wherein the first seat is connected to a floor of the body, and further including a second seat connected to a lower wall of the expansion portion behind the first seat, and a third seat connected to the lower wall of the expansion portion behind the second seat, the second seat and the third seat being movable toward and away from the first seat as the expansion portion is moved between the retracted position and the extended position.

37. A passenger vehicle, including:

a body having a longitudinal axis;

an expansion portion connected to the body and configured to move substantially along the longitudinal axis between a retracted position wherein the body and the expansion portion define a first volume of interior space, and an extended position wherein the body and the expansion portion define a second volume of interior space, the second volume being larger than the first volume;

a first seat supported by the body and connected to a floor of the body;
a second seat connected to a lower wall of the expansion portion behind the first seat;
a third seat connected to the lower wall of the expansion portion behind the second seat, the second seat and the third seat being movable toward and away from the first seat as the expansion portion is moved between the retracted position and the extended position; and
a table mounted to the first seat for movement between a stowed position wherein the table is substantially parallel to a back of the first seat and an in-use position wherein the table is supported at an angle relative to the back.

38. (Withdrawn) The vehicle of claim 36, further including a fourth seat connected to the lower wall of the expansion portion behind the third seat.

39. (Withdrawn) The vehicle of claim 1, wherein the vehicle is a pick-up truck with a bed having a cargo area, the expansion portion moving toward and away from a rear end of the bed during movement between the extended position and the retracted position, respectively.

40. (Withdrawn) The vehicle of claim 39, wherein the expansion portion reduces the cargo area of the bed when in the extended position.

41. (Withdrawn) The vehicle of claim 39, wherein the expansion portion includes a lower wall that is substantially planar with an upper edge of the bed

42. The vehicle of claim 1, wherein the seat is coupled to a floor of the body and the expansion portion moves relative to the seat.

43. The vehicle of claim 1, wherein the seat is coupled to the expansion portion and moves along with the expansion portion.

44. The vehicle of claim 1, wherein the first seat is connected to a floor of the body, and further including a plurality of longitudinally spaced seats connected to a lower wall of the expansion portion behind the first seat, the plurality of longitudinally spaced seats being movable toward and away from the first seat as the expansion portion is moved between the retracted position and the extended position.

45. The vehicle of claim 44, further including a table supported by the body, the plurality of longitudinally spaced seats being movable toward and away from the table as the expansion portion is moved between the retracted position and the extended position.

46. The vehicle of claim 45, wherein the plurality of longitudinally spaced seats includes a second seat and a third seat longitudinally spaced apart from the second seat, a distance between the second seat and the third seat remains substantially fixed as the expansion portion is moved between the retracted position and the extended position.

47. A passenger vehicle, including:

a body having a longitudinal axis;

an expansion portion connected to the body and configured to move substantially along the longitudinal axis between a retracted position wherein the body and the expansion portion define a first volume of interior space, and an extended position wherein the body and the expansion portion define a second volume of interior space, the second volume being larger than the first volume;

a first seat supported by the body and connected to a floor of the body;

a plurality of longitudinally spaced seats connected to a lower wall of the expansion portion behind the first seat, the plurality of longitudinally spaced seats being movable toward and away from the first seat as the expansion portion is moved between the retracted position and the extended position;

a table supported by the body, the plurality of longitudinally spaced seats being movable toward and away from the table as the expansion portion is moved between the retracted position and the extended position, the table being moveable between a stowed position wherein the table is substantially parallel to a back of the first seat and an in-use position wherein the table is supported at an angle relative to the back of the first seat.

48. The vehicle of claim 47, wherein the table is coupled to the back of the first seat.

49. The vehicle of claim 45, wherein the table includes a support which is collapsible placing the table in a stowed position and is extendable placing the table in an in-use position.

50. A passenger vehicle, including:

a body having a longitudinal axis;

an expansion portion connected to the body and configured to move substantially along the longitudinal axis between a retracted position wherein the body and the expansion portion define a first volume of interior space, and an extended position wherein the body and the expansion portion define a second volume of interior space, the second volume being larger than the first volume;

a first seat supported by the body and connected to a floor of the body;

a plurality of longitudinally spaced seats connected to a lower wall of the expansion portion behind the first seat, the plurality of longitudinally spaced seats being movable toward and away from the first seat as the expansion portion is moved between the retracted position and the extended position;

a table supported by the body, the table including a support which is collapsible placing the table in a stowed position and is extendable placing the table in an in-use position,

and the table including a table top pivotally coupled to the back of the first seat, the plurality of longitudinally spaced seats being movable toward and away from the table as the expansion portion is moved between the retracted position and the extended position.

51. The vehicle of claim 20, wherein the housing of a first one of the assemblies is mounted substantially within a first rear panel of the body, the housing of a second one of the assemblies is mounted substantially within a second rear panel of the body, a portion of the movable member of the first assembly is mounted substantially within a first side wall of the expansion portion, and a portion of the movable member of the second assembly is mounted substantially within a second side wall of the expansion portion.

52. The vehicle of claim 36, further including a table mounted to the first seat for movement between a stowed position wherein the table is substantially parallel to a back of the first seat and an in-use position wherein the table is supported at an angle relative to the back.

53. The vehicle of claim 45, wherein the table is moveable between a stowed position wherein the table is substantially parallel to a back of the first seat and an in-use position wherein the table is supported at an angle relative to the back of the first seat.

54. The vehicle of claim 53, wherein the table is coupled to the back of the first seat.

55. The vehicle of claim 49, wherein the table includes a table top pivotally coupled to the back of the first seat.

EVIDENCE APPENDIX

Appellant is unaware of any evidence entered into the record.

RELATED PROCEEDINGS APPENDIX

Appellant is unaware of any proceeding to identify pursuant to 37 CFR §41.37(c)

(1)(ii).